

CRIMINAL APPEAL No.340 OF 1993

Against the judgment and order dated
30.9.1993/5.10.1993 passed by Sri
Krishna Mohan Srivastava, IInd
Additional Sessions Judge, Bhagalpur in
Sessions Trial No. 543 of 1988 arising
out of G.R. Case No. 1223 of 1986.

1. MOHAN YADAV, son of Late Mahendra Yadav
 2. Gutuk @ Gudka Yadav, son of Bouni Yadav
- Both residents of Nirhatti, P.S.- Sultanganj, District- Bhagalpur
----- Appellants

Versus

THE STATE OF BIHAR

----- Respondent

With

CR. APP (SJ) No.5 OF 1994

GORIL YADAV @ GORELAL YADAV, son of Late Sattan Yadav, resident of village-
Mirhatti, P.S.- Sultanganj, District- Bhagalpur
----- Appellant

Versus

THE STATE OF BIHAR

----- Respondent

For the appellants in Cr.Appeal No. 340/1993:- Mr. Jawahar Pd. Karn, Sr. Adv.
For the appellant in Cr. Appeal No. 5/1994 :- Mr. Uma Kant Prasad, Adv.
Mr. Rajib Ranjan Singh, Adv.
For the State :- Mr. R.N. Jha, A.P.P.

P R E S E N T

THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN

S.A. Khan, J.

The three appellants in these two
criminal appeals have challenged the judgment
and order dated 30.9.1993 passed by the IInd
Additional Sessions Judge, Bhagalpur in Sessions
Trial No. 543 of 1988. By the impugned judgment

and order, the appellants have been convicted to undergo R.I. for 7 years for offences alleged to have been committed under Section 304 part I/34 of the Indian Penal Code.

The prosecution case is that Sebi Mandal, the deceased in this case gave his 'Fardbeyan' at Sultanganj hospital on 28.10.1980 in which he has stated that he was ploughing the field when the appellants who were armed with 'Lathi' came to the field and began to assault him on his legs, knees, hands etc. It is alleged that Mohan Yadav and Goril Yadav assaulted him on his body whereas others assaulted on other parts of the body. Sebi Mandal has stated that the Jagdish Mukhiya P.W. 1, Tarni Mandal P.W. 2, Ram Swaroop Mandal were also present at the place of occurrence.

The case of the prosecution has been supported by P.Ws. 1, 2 and 3 who are said to be the independent witnesses in this case. P.W. 3, Dinesh Mandal has a plot of land on the boundary of the land which was being ploughed by Sebi Mandal, and as such he is said to have seen the occurrence from his field whereas P.Ws. 1 and 2 while going to the adjoining village to buy

mangoes had seen Sebi Mandal ploughing the field and while returning they claim to have witnessed the occurrence. All the witnesses have supported the fact that the appellants alongwith one Babu Yadav who died during the trial of the case were assaulting Sebi Mandal with 'Lathis'. It has also been alleged by P.W.4 Sarjug Mandal the father of Sebi Mandal that three other persons were present at the place of occurrence. Three other persons namely Shib Pujan Ram, Shankar Ram and Daroga Ram (they stand acquitted) were carrying pistols and had threatened the witnesses, as a result of which none of them called out any body to intervene in the occurrence.

Learned counsel appearing on behalf of the appellants submits that no specific motive has been stated by the father of Sebi Mandal which would indicate why the appellants had decided to assault or beat up the deceased. It is submitted that there must be some reasons to justify the assault. It is not believable that three persons begin to assault a man without there being some sort of provocation or motive for the said assault. In this case no motive

has been disclosed by the other witnesses as well. Assuming that the Court is to accept the argument advanced on behalf of the appellants the question that would come up for consideration is that some sort of explanation ought to have been given by the defence by way of suggestion to show that there was a reason for false implication. It appears that both the motive and the reason to implicate the appellants have not been disclosed by any witness. Therefore, it would be difficult for this Court to disbelieve the statement given by the witnesses in the Court.

The second leg of the argument that has been advanced on behalf of the appellants is that Sebi Mandal was all by himself while he was being assaulted by four persons whereas P.W. 1 is the Mukhiya of the village, Tarni Mandal P.W. 2, Dinesh Mandal P.W. 3, father of the deceased Sarjug Mandal P.W. 4 and Parmanand Mandal P.W. 5 were present at the place of occurrence. It has been submitted that it is unbelievable and unnatural that these four persons along with three or four others who have not been examined but have been mentioned by witnesses to be

present at the place of occurrence did not take any steps to stop the appellants from assaulting Sebi Mandal. They did not protest or even shout for help. P.W. 1 Jagdish Mukhiya as his name indicates was a Mukhiya at the relevant time and it would be presumed that he would be wielding some power. It has been argued that in fact no one was present at the time when the occurrence took place and it has been falsely claimed by the witnesses that they were present at the place of occurrence.

This argument on behalf of the appellants would be acceptable to the Court except that it is difficult for the Court to ignore Ext. 6 i.e. the statement made by the deceased. He was injured person and there is no reason that the Court should disbelieve the statement made by Sebi Mandal before the police. One Hari Prasad Mandal was present at the time when the statement of Sebi Mandal was recorded by the Daroga. This Hari Prasad Mandal has not been examined although he would be an important witness in this case to prove the statements made by Sebi Mandal. The Investigating Officer P.W. 7 has proved the statement Ext. 6 which

according to the defence is not sufficient to convict the appellant. It is further submitted that the Sebi Mandal has given a reason for the occurrence. According to him he was assaulted because of village politics which ought to have proved by an independent witness.

In the circumstances all that can be said is that statement of Sebi Mandal has to be considered along with the other evidence that has come on record. For this purpose I shall refer to the injury report.

P.W. 7 Dr. Rajendra Prasad had examined the victim and found following injuries:-

i. Lacerated wound 1" x $\frac{1}{2}$ " x bone on left side of bone.

ii. Lacerated wound $\frac{1}{2}$ " x S x $\frac{1}{4}$ " on dorson of left elbow.

iii. Swelling 3" x 2" on left elbow joint.

iv. Lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " on right knee joint.

v. Swelling whole of knee joint.

vi. Lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " on right elbow.

vii. Swelling whole of right elbow.

viii. Buise whole of upper eye lid.

ix. Lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " on left leg below knee.

x. Scratch $\frac{1}{2}$ " x $\frac{1}{4}$ " on left cheek.

xi. Lacerated wound $\frac{1}{4}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " on middle finger of right hand.

The injuries enumerated above should ordinarily not have led to death of a person as the injuries are on the elbow, knee, leg, below knee, scratches and bruises. It is not expected in the usual course of things that such an injury would lead to death of a person and, therefore, the Court has rightly convicted the appellants under Section 304 Part I. The main aspect of this case is that the injuries do not indicate that the appellants in fact had any intention to cause the death of Sebi Mandal. Not a single injury has been inflicted on the vital part of the body. However, there is no doubt about the fact that Sebi Mandal received the injuries. The question that arises is that who were the persons who actually inflicted the injuries. Going by the statement made by Sebi Mandal, it can be held that the injuries can be attributed to the appellants.

In the circumstances, this Court holds the appellants guilty of offence under Section 304 part II but in the special facts and circumstances enumerated above and also because the case is of the year 1986 and considering that the appellants have remained in custody for almost two years, the sentences are reduced to period undergone subject to payment of fine of Rs. 2000/- each to be paid to the wife/children/father or mother of Sebi Mandal within a period of two months after receiving notice in this case, in default of which the appellant shall undergo R.I. for 2 months.

The appeals are dismissed with the aforesaid modification in the sentence. The appellants are discharged from the liabilities of their bail bonds.

Patna High Court,
May 1st, 2009
N.A.F.R./Sanjay

(Sheema Ali Khan, J.)